

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

CONSUMER DATA INDUSTRY
ASSOCIATION,

Plaintiff,

v.

Civil Action No. 1:10-cv-00458-MCA/WDS

GARY K. KING, in his official capacity
as ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO,

Defendant.

TEMPORARY RESTRAINING ORDER

COMES NOW, this 18th day of May, 2010, the Court having considered: (i) the Complaint for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunction filed by plaintiff Consumer Data Industry Association (“CDIA”); (ii) CDIA’s Motion for Temporary Restraining Order; (iii) CDIA’s Memorandum of Law in Support of Motion for Temporary Restraining Order (“TRO”), together with supporting exhibits, on notice to Defendant; and (iv) having considered the comments of the parties with respect to the entry of a TRO made during a May 18, 2010 hearing before the Court; the Court, based on the comments of the parties’ counsel, understands the following to be the parties’ positions:

1. CDIA contends that: (i) it has a substantial likelihood of prevailing on the merits of its Complaint contending that Section 3(D)&(E) of House Bill 131 (attached as Exhibit 1 to this Order) (“*hereinafter* “Section 3(D)&(E)”), is preempted by the federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681t(a), 1681t(b)(1)(B), 1681t(b)(1)(E) and 1681t(b)(5)(C); (ii) CDIA and its consumer reporting agency members will suffer irreparable harm in the absence of injunctive relief; (iii) neither the State of New Mexico nor its residents will suffer irreparable harm if the requested injunctive relief is granted to CDIA; and (iv) the public interest weighs in

favor of granting the requested injunctive relief.

2. The Defendant, Attorney General Gary King, agrees to the entry of a TRO for a period of 90 days, or until further order of the Court, to permit the parties and the Court to fully address the claims pled in CDIA's Complaint.

3. The parties agree that the merits of the claims pled in CDIA's Complaint may be resolved by briefing alone and that, subject to the Court's modification, neither party anticipates or will be required to produce witnesses at any hearing the Court may schedule following the submission of the parties' briefs.

Based upon the foregoing, it is **ORDERED AND DECREED THAT:**

A. TRO is issued immediately without the need for CDIA to post a bond in this matter;

B. Pursuant to the agreement of the parties, this TRO restrains and enjoins the State of New Mexico from enforcing, directly or through any designee, Section 3(D)&(E), for a period of 90 days from the date of this Order; and

C. During the term of this TRO, or any extension of this TRO, consumer report agencies are not required to comply with Section 3(D)&(E). This order applies to any "consumer reporting agency," as that term is defined in N.M. Stat. Ann. § 56-3A-2(B) or the federal FCRA, 15 U.S.C. § 1681a(f);

D. The parties are instructed to confer and submit to the Court a schedule for their briefing on the merits in this matter on or before June 8, 2010.

SO ORDERED, this 18th day of May 2010, at 8:00 p.m.


M. CHRISTINA ARMIJO,
United States District Court Judge

Approved:

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By /s/ Charles J. Vigil

Charles J. Vigil

Attorneys for Plaintiff

P. O. Box 1888

Albuquerque, NM 87103

Telephone: (505) 765-5900

FAX: (505) 768-7395

ROBLES, RAEL & ANAYA, P.C.

By Approved by telephone 5/18/2010

Luis Robles

Attorneys for Defendant

500 Marquette Avenue, N.W., Suite 700

Albuquerque, New Mexico 87102

Telephone: (505) 242-2228

FAX: (505) 242-1106